IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL
CRIMINAL APPEAL No. 296 of 2007
(Old No. 1297 of 1993)

Mangoo Singh S/o Sukhkhan Singh, R/o Vill. Mahua Dwara, P.S. Jaspur, Nainital

...Appellant

Versus

Dhannoo S/o Darbari & **nine others**

... Respondents

Sri Jagdish Prasad, learned AGA for the appellant
Sri Navneet Kaushik, learned counsel for Respondent Nos. 1,2,4,5,6,7,8 and 9
Sri Nandan Arya, learned AGA for the State/Respondent No.10

Dated: October 12, 2007

HON. DHARAM VEER, J.

This appeal has been preferred against the judgment and order-dated 9.11.1992 passed by Judicial Magistrate, Kashipur in Criminal Case No. 410 of 1992, Mangoo Singh v. Dhanoo Singh and others, whereby the respondent Nos.1 to 9-Dhannoo, Budh Singh, Shanti, Vinod, Kripal, Mahavir, Jaipal, Vijai Pal and Mahipal have been acquitted by learned Magistrate.

2. On 2.8.2007 this Court issued notices to the respondents and in compliance of that order, CJM, U.S. Nagar vide his report dated 13.8.2007 has informed that Respondent No.3- Shanti has died about four years back, hence the appeal against Respondent No.3 stands abated.

3. Briefly stated facts of the care are that appellant filed a case against the respondents with the allegations that on 7.1.1990, Respondent Nos. 1 to 4 created a dispute in the part of the house purchased by the wife of appellant, the case of which was also pending in the civil court. It was also alleged that on 26.3.1990 despite there being stay from the court, the respondent Nos. 1 to 9 had destroyed two rooms of said house. On 10.10.1990 at 2:00 P.M., when the appellant was in jail, the accused persons/respondents No.1 to 9, being armed with weapons, came in his house with the

common intention and took away his belongings. It was also alleged that the respondents No.1 to 9 hurled abuses and intimidated his wife to her life. The wife of the appellant went to lodge the report in the P.S. Jaspur, however her report was not lodged and then she filed a complaint in the court of J.M. Kashipur.

4. After the compliance of Section 200 and 202 Cr.P.C., the respondents No.1 to 9 were summoned in the court. The appellant/complainant in support of his case got examined himself and also Kallu Singh u/s 244 Cr.P.C. however no other evidence was produced.

5. Thereafter, the charge was framed against the respondent Nos.1 to 9 u/s 147/148/427/504/506 IPC who pleaded not guilty and claimed to be tried.

6. The appellant was again asked to produce evidence u/s 246 Cr.P.C., however he got examined only himself, Kallu Singh and Brahmo Devi and no other evidence was produced in the court and thereafter the prosecution evidence was closed.

7. When the statements of the respondent Nos.1 to 9 was recorded u/s 313 Cr.P.C., then they pleaded themselves not guilty.

8. After hearing learned counsel for the parties and perusing the entire material available on record, the learned J.M., Kashipur vide his judgment and order dated 9.11.1992 acquitted the respondents No.1 to 9 for the offences punishable u/s 147/148/149/427/504/506 IPC. Feeling aggrieved, the appellant/complainant has come up in appeal before this Court.

9. I have heard Sri Jagdish Prasad, learned counsel for the appellant, Sri Navneet Kaushik, learned counsel for Respondent Nos.1,2,4,5,6,7,8 and 9 was well as Sri Nandan Arya, learned AGA for the State and perused the judgment

and order dated 9.11.1992 passed by Judicial Magistrate, Kashipur.

10. On 2.08.2007, this Court directed for summoning the lower court record and in compliance of that order, In-charge Officer, District Magistrate, Nainital by his report dated 24.9.2007 has informed that the record of the case has been weeded out 19.6.2002. Sri Jagdish Prasad, learned counsel for appellant, Sri Navneet Kaushik, learned counsel for Respondent Nos.1,2,4,5,6,7,8 and 9 and Sri Nandan Arya, learned A.G.A. for the State/Respondent No.10 have submitted that after passing of the order dated 9.11.1992 which is under challenge, now the period of 15 years has been expired. All of them have also submitted that now the reconstruction of the record or retrial is not possible. In a judgment rendered by Allahabad High Court in the case of *Aziz Khan Vs. State of U.P. reported in ACC 1992 (29) 223,* it was held as under:-

> ***"Where record has been lost or destroyed and it is not possible to reconstruct the record, it will not be just or proper to direct the retrial of the case if a long gap has elapsed since the commission of the offence. The occurrence had taken place on 15.10.1976 i.e. 15 years back and the complete record has not been reconstructed; Applying the principle laid down in the above mentioned authorities, we are of the opinion that the appeal of Aziz Khan should be allowed and his conviction and sentence should be set aside and the government appeal against acquittal of accused-respondents is liable to be dismissed."***

11. Even otherwise, after perusing the order passed by learned Judicial Magistrate, Kashipur, I do not find any illegality or irregularity in the said judgment and order date 09.11.1992.

12. In view of the above, the appeal is dismissed.

(Dharam Veer, J.)

Rajeev Dang